

**REAL PROPERTY APPRAISER BOARD  
MAIN LEVEL, ROOM “Y”  
NEBRASKA STATE OFFICE BUILDING  
301 CENTENNIAL MALL SOUTH, LINCOLN, NE**

**19 August 2010**

**OPENING**

Chairman Gregg Mitchell called to order the August 19, 2010 meeting of the Nebraska Real Property Appraiser Board at 10:16 a.m., in Room “Y” on the main level of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. Informal conferences were scheduled from 9:00-10:00 a.m. prior to the open meeting of the Board.

**NOTICE OF MEETING**

Chairman Mitchell announced the notice of the meeting was duly given, posted, published and tendered in compliance with the Open Meetings Act, and all Board members received notice simultaneously by e-mail. Publication of official notice of the meeting appeared in the August 16, 2010 edition of the *Lincoln Journal Star*, a legal newspaper of general circulation in this State, as required by the public meeting law. The agenda was kept current in the Nebraska Real Property Appraiser Board Office and on the Board’s website. Materials generally used by the Board for this meeting were available in the public folder for inspection by the public and in accordance with the Open Meetings Act. A copy of the Open Meetings Act was available for the duration of the meeting. For the record, Board Members Bradford Moore, Matthew ‘Joe’ Wilson, Philip Barkley, David Hartman, and R. Gregg Mitchell were present. Director Kitty Policky was also present.

**ADOPTION OF THE AGENDA**

Chairman Mitchell reminded those present for the meeting that the Agenda cannot be altered 24 hours prior to the meeting except for emergency items according to the Open Meetings Act. Vice Chair Moore moved to adopt the Agenda as printed. Board Member Wilson seconded the motion. With no further discussion, the motion carried with Moore, Wilson, Barkley, Hartman, and Mitchell voting aye

**WELCOME GUESTS**

Chairman Mitchell welcomed guests to the meeting and asked that they please sign the guest log.

**APPROVAL OF THE MINUTES FROM JULY 15, 2010**

Vice Chairman Moore asked for any additions or corrections to the July 15, 2010 minutes. With no additions or corrections, Board Member Barkley moved to adopt the minutes as presented. Board Member Wilson seconded the motion. With no further discussion the motion carried with Wilson, Barkley, Hartman, Moore, and Mitchell voting aye.

**CHAIRMAN’S REPORT**

Director Policky distributed correspondence from The Appraisal Foundation titled “Statement to the Sponsoring Organizations of The Appraisal Institute” concerning the case between The Appraisal Foundation and the Appraisal Institute in regard to allegations that The Appraisal Institute had engaged in conduct detrimental to the interests of The Appraisal Foundation. The statement listed three resolutions against the Appraisal Institute as follows: 1) . . . Board of Trustees concluded the Appraisal Institute engaged in conduct materially and seriously prejudicial to the purposes and interests of the Foundation; 2) The Appraisal Institute shall be suspended as an Appraisal Sponsor

effective September 15, 2010 and ending on April 15, 2011, permission to reproduce the Uniform Standards of Professional Practice (USPAP) without charge and its discount on the purchase price of USPAP shall be revoked . . . commencing September 15, 2010 and ending July 1, 2010; and 3) Chair of the Appraisal Foundation shall promptly appoint a task force comprised of not less than three nor more than five members from the Board of Trustees to liaison with the Appraisal Institute during the period of suspension . . . for the purpose of rehabilitating the relationship of the Appraisal Institute with The Appraisal Foundation as an Appraisal Sponsor.

Chairman Mitchell explained to members the circumstances leading to the published statement issued by The Appraisal Foundation. Discussion included Board members, and a guest and member of the Appraisal Institute, Larry Saxton. Mr. Saxton attributed much of the sentiment to the lack of communication and the miscommunication that had occurred. Although Nebraska has no position in regard to the circumstances that have developed, Board members felt in the final analysis that a letter should be sent to The Appraisal Foundation in regard to the statement issued concerning the actions of the Appraisal Institute.

Vice Chair Moore reminded us that any communication with the Foundation should make it clear that we are not critical of suspension of the Institute but view the real issue as education.

Chairman Mitchell called for a motion in regard to the communication. Board Member Wilson proposed we send a letter to The Appraisal Foundation analyzing their involvement with providing and developing education in direct competition with the private sector. Vice Chair Moore second.

Board Member Wilson expressed his dissatisfaction with The Appraisal Foundation for meddling in the private sector in regard to education. The position of The Appraisal Foundation should be as a regulator and oversight and not as an education provider. The monopolizing position of the Appraiser Qualifications Board, Course Approval Program appears to be a good example of the oversight regulator attempting to control the education offerings of the private sector by charging elaborate fees to fill a role involving requirements they developed realizing that small oversight agencies were certainly unable to fill, appears only to be more evidence of posturing themselves in the role of education provider. The Appraisal Foundation should confine its interests to the Uniform Standards and the quality credentialing of instructors in regard to the Uniform Standards and leave the education to the providers. If money is the basis of the issue, perhaps the Foundation should raise rates not associated with the roles as a regulator.

Vice Chairman Moore emphasized the communication should focus on the topic of the proper role of regulator and educator. Chairman Mitchell stressed the inherent conflict of interest in being a regulator of education and setting the standards for education and then providing the education. The role of The Appraisal Foundation to oversee agencies, as regulator of agencies in duties and responsibilities, and review for consistency with standards is in conflict. Expanding the role to encompass the duties of the private sector is not acceptable. The correspondence would not be directed toward the relationship between the Foundation and the Institute but simply stating what the role of the Foundation should be in regard to the role as regulator and education.

All ideas in regard to the communication would be forwarded to Chairman Mitchell.

With no further discussion the motion carried with Barkley, Hartman, Moore, Wilson, and Mitchell voting aye.

## **DIRECTOR'S REPORT**

Director Policky reported the number of appraisers for August 16, 2010 stands as follows: 120 Registered/Conversion; 105 Licensed Residential; 211 Certified Residential; and 384 Certified General for a total of 819 or an increase of one registered appraiser from the July meeting and 28 less than the total for August 2009 of 848 appraisers. The renewal process ended on June 30<sup>th</sup>.

The 2009 Annual Report from the Appraisal Subcommittee was presented to members and the public simply as an information tool. The Appraisal Subcommittee reviews and monitors state appraiser regulatory programs for compliance with Title XI, AQB Criteria and Policy Statements. The report includes a financial statement and independent auditor's report; statutory references; 2009 annual compliance review findings; and national appraiser credential license and certification statistics. The Appraisal Subcommittee annual report is intended for information and use by the management of the Subcommittee but the addition of Appendix B, Statutory References, Title XI, §1101-§1123 has oversight value for regulatory agencies.

Partial bill text in regard to H.R. 4173 from the Library of Congress was distributed to members with printing of text relevant to the appraiser profession. Basically H.R. 4173 amends FIRREA. The text for H.R. 4173 is massive and in addition to the limited printing of text, the reference for sections was included to assist in locating information contained in the bill. It is important to review the areas such as reasonable and customary fees, appraisal management regulations. It also directs the Appraisal Subcommittee to monitor the state and federal financial institutions regulatory agencies to protect consumers from improper appraisal practices. The bill requires development of regulations affecting the operations of any appraisal management company that is subsidiary owned and controlled by a federally regulated financial institution. The bill also prohibits broker price opinions from being used as the primary basis to evaluate property for loan origination in connection with a residential mortgage loan secured by such property, and establish and operate, one year after enactment of the Act, an Appraisal Complaint National Hotline. These are just a few of the changes mandated by H.R. 4173. Vice Chairman Moore requested that the H.R. 4173 be returned to the September agenda and give the members a month to review the content of the law that is relevant.

Director Policky closed the report by thanking the Board for their service and assistance.

## **RECEIPTS AND EXPENDITURES REPORT – JULY 2010**

The receipts and expenditures for July were reviewed by the Director by line item with the Board. The Budget Status Report indicates a total of \$2,876.82 in receivables and \$12,395.05 in expenditures. A copy of the Budget Status Report, the General Ledger Detail Report and Receipt Journal for July are attached and considered part of these minutes. Vice Chair Moore moved to accept and file the July 2010 Receipts and Expenditures report for audit. Board Member Barkley seconded the motion. With no further discussion the motion carried with Moore, Wilson, Barkley, Hartman, and Mitchell voting aye.

Board took a break at 11:02 a.m.

Board meeting reconvened at 11:14 a.m.

## **UNFINISHED BUSINESS**

### **1. Renewal Rates for 2011 & 2012**

A request for 2011 and 2012 renewal fees was initially approved at the June 17<sup>th</sup> meeting of the Board. Director Policky, upon developing projections for the 2011-2013 biennium budgets, requested the Board revisit the issue and reconsider the approved rates. The adoption of the staggered credentialing procedure hinders annual review of receivables in relation to the payables. The proposed rates will not adequately meet the needs of this agency. The reasons cited are as follows: 1) The state appropriated from the NRPAB \$106,400.00 in fees from the cash fund to meet a shortfall in general fund tax receipts; 2) Escalating costs of enforcement and disciplinary actions continue to increase. Recent cases have cost approximately \$100,000.00. The Board has a statutory duty and obligation to always proceed with an enforcement filed, as the most important role of the Appraiser Board is to protect the citizens of Nebraska and render due process regardless of the cost; and 3) the cost incurred by this agency in upgrading appraiser credentials prior to the implementation of the 2008 criteria. The cost passed on to the hundreds of applicants upgrading did not begin to equal the cost of processing, but was absorbed by the agency. A policy was adopted to ease the cost to the agency for resubmissions but the investment remained high.

In addition, state agencies have raised services drastically. Communications continue to charge excessive fees for services to maintain the web format for entry and tracking. A cost that in 2005 was approximately \$300.00 at most has now escalated and approaches almost \$1,000.00 monthly for a small agency such as the Appraiser Board. Everything now has a cost. Every means of assisting an agency is billed and passed on to the agency. This office performs all payroll, accounting, budget, receivables, and payables transactions. We are under an obligation of a Memorandum of Understanding for auditing services from the Accounting Division, which charges for each transaction and while the transaction fee is reasonable, it is yet another cost to the agency to do business.

Fiscal expenditures and receipts have been tracked and recorded since 1991 and were presented to the Board for consideration. The accounting made it clear that of all considerations to the budget shortfall, the greatest impact to the bottom line will be the loss of over 100 Registered appraisers in 2012. To date, it is estimated that this agency will retain only 19 Registered appraisers for 2012. The Registered pay the equal of the federally-recognized credentials. It is apparent, based on 2010 accounting rates, that the fees collected do not meet the financial obligations of this office. Projected income for 2011, based on 2010 accounting of 775 renewed credentials and 45 new credentials issued generating an income of approximately \$164,000.00 at the current rate. A rate of \$225.00 would generate approximately \$184,500.00. A rate of \$250.00 would generate approximately \$205,000.00. A rate of \$275.00 would generate approximately \$225,500.00 and a rate of \$300.00 would generate approximately \$246,000.00. Although renewal credentialing fees are not the only source of income, it generates the majority of the monies collected. It was pointed out that we had intentionally maintained a generous cash fund in anticipation of the elimination of the Registered credential. Adding the stagnat nature of the profession with the implementation of the new criteria on January 1, 2008 simply exacerbated the financial environment. It is also imperative to consider that the Nebraska Legislature solicited from the cash funds as a result of LB1 in 2009 a total of \$106,400.00 for fiscal years 09-10 and 10-11, which actually means that unappropriated funding from the cash fund account, was solicited by the Legislature to makeup for the Nebraska budget shortfall. The Special Session of the 101<sup>st</sup> Legislature in 2009 adopted LB2, section 228; LB2, section 3 & 4; and LB3 for authorization to transfer funds from cash accounts. Never before has the Legislature taken funds from cash funded agencies. All cash funded agencies testified against the solicitation but to no avail.

Faced with few options, Board Member Wilson offered a motion to raise the yearly rate to \$300.00 for 2011 and 2012. The motion was seconded by Vice Chairman Moore. The new and renewal rates for 2011 and 2012 would be as follows: \$300.00 for Licensed Residential, Certified Residential, and Certified General. The renewal amount for the federally recognized designations would remit in addition to the renewal fee the \$25.00 fee due to the Appraisal Subcommittee for each credential. The Registered/Conversion and Appraiser Trainee new and renewal rate would be set at \$300.00.

With no further discussion the motion carried with Wilson, Barkley, Hartman, Moore, and Mitchell voting aye.

## **2. Final Rules & Regulations**

The approved copies of the NAC Title 298 Rules and Regulations of the Appraiser Board from the Attorney General's office were prepared as required and forwarded to the Governor's Policy Research Office for review and signature. The rules and regulation process was complete with the Governor's signature on August 6, 2010 and became effective ten days from the day they were signed or August 16, 2010. A copy of the current rules and regulations will be electronically forwarded to the appraiser community and will be available on the website as well as the Secretary of State's website.

## **3. Travel / AARO Meeting.**

The final arrangements for the AARO meeting have been approved and submitted with only travel and hotel costs approved. The meeting is scheduled for October 1-5 in Washington, D.C.

## **NEW BUSINESS**

### **1. 2011 & 2012 Renewal Forms**

With the Appraiser Board's approval of the renewal fees for 2011 and 2012 set at \$300.00 plus the \$25.00 fee to the FFIEC, Director Policky presented the renewal forms for approval. Chairman Mitchell suggested that a distinct reference to one year and two year renewal terms should be placed at the top and made clear to the appraiser. With no further discussion, Chairman Mitchell called for a motion. Board Member Barkley moved to approve the 2011 and 2011-2012 renewal forms as presented. Board Member Hartman seconded the motion. The motion carried with Barkley, Hartman, Moore, Wilson, and Mitchell voting aye.

### **2. Proposed 2011-2013 Biennial Budget**

Director Policky distributed the proposed 2011-13 budget appropriation explaining the proposed projections for each expenditure as well as the projected income is based on the number of credentialed appraisers to date. The 2011-2012 budget is projected to be \$276,611.00 and the 2012-2013 budget is projected to be \$272,350.00. These obligations are not set in stone but are merely a request for the authority to spend the projected amount. There are no salary increases other than union mandated raises for the staff assistant. Projected rates for state services were generated by the budget office. With no further discussion, Chairman Mitchell called for a motion. Board Member Wilson moved to approve the proposed 11-13 budget appropriation as presented. Vice Chairman Moore seconded the motion. The motion carried with Hartman, Moore, Wilson, Barkley, and Mitchell voting aye.

## **GENERAL PUBLIC COMMENTS**

Chair Mitchell asked for any public comments. With no further comments, the Chair proceeded to education.

Board took a break at 12:15 p.m.

Board meeting reconvened at 12:25 p.m.

## **EDUCATION**

Board Member Wilson moved to approve the following continuing education seminars and respective instructors as listed:

### *Continuing Education New:*

1. Appraisal Institute, Chicago, IL:
  - A. "General Appraiser Income Approach Part II" / ONLINE / 30 hours / C2779-I  
Instructor: David Lennhoff
  - B. "Thinking Outside the Form" / 7 hours / C21036  
Instructor: Jim Atwood
  - C. "Advanced Concepts & Case Studies" / 38 hours / C21040  
Instructors: Larry T. Wright & Kerry Jorgensen
2. McKissock, Warren, PA:
  - A. "Essential Elements of Disclosures & Disclaimers" / ONLINE / 5 hours / C21038-I  
Instructor: Daniel Bradley
3. CLE International, Denver, CO:
  - A. "Nebraska Water Law Conference 2010" / 12 hrs. / C21006  
Instructors: Jim Amarin
4. Trans-American Institute of Professional Studies, Kearney, NE  
Request instructor approval Barry Shea:  
Core Curriculum: Q002, L/CR004, L/CR005, L/CR006, L/CR007, CR008, CR/CG009, QE2803 & QE21010
5. Mid-West Appraisers Association, Kearney, NE  
Requests instructor approval for Barry Shea:  
Continuing Education: C2927, C2318, C2902, C2928, C21034 & C2715  
Requests instructor approval for Ann Susko:  
Continuing Education: C2927, C2318, C2902, C2928, C21034 & C2715

Vice Chairman Moore seconded the motion. With no further discussion the motion carried with Moore, Wilson, Barkley, Hartman, and Mitchell voting aye.

## **APPLICANTS & ENFORCEMENT**

Vice Chair Moore moved that the Board go into executive session for the purpose of reviewing applicants for credentialing and consideration of written complaints and disciplinary action. A closed session is clearly necessary to prevent needless injury to the reputation of the individual or individuals relating to the issues of qualifying applicants and relating to the alleged violations of performance in real property appraisal practice. The time on the meeting clock was 12:29 p.m. Board Member Wilson seconded the motion. With no further discussion the motion carried with Wilson, Barkley, Hartman, Moore, and Mitchell voting aye.

Vice Chair Moore moved to come out of executive session at 1:46 p.m. Board Member Wilson seconded the motion. The motion carried with Barkley, Hartman, Moore, Wilson, and Mitchell voting aye.

## **MOTIONS TO ACT ON CLOSED SESSION AGENDA**

Chairman Mitchell opened the floor to discussion of closed session agenda items.

Vice Chair Moore moved to take the following action for the Registered applicant:

R876 / Applicant meets Statutory obligations of §76-2229.01. Approve to sit for examination.

Vice Chair Moore moved to take the following action for a Licensed Residential applicant:

L590 / Applicant meets statutory obligations of §76-2230. Approve to sit for examination.

Vice Chair Moore moved to take the following action for a Certified Residential applicant:

CR377 / Candidate meets all statutory obligations to upgrade to qualify for CR credential. Work product has been approved. Approve for credentialing when successful completion of exam is submitted. Send advisory letter regard to work product.

Vice Chair Moore moved to take the following action for a reciprocal certified general moving to Nebraska.

CG605 / Candidate meets all statutory obligations of §76-2232. Approve credential as Nebraska resident.

Board Member Wilson seconded the motion. Motion carried with Barkley, Hartman, Moore, Wilson, and Mitchell voting aye.

Vice Chair Moore moved to take the following enforcement actions:

- 09-26 Chairman signed Consent Agreement to 15-hour National USPAP course; 15-hour Residential Report Writing & Case Studies to be completed by 11/30/2010. Respondent's credential will be downgraded to Certified Residential immediately.
- 10-03 Hold. Chairman sign Consent Agreement. Agreement 2-day USPAP & General Report Writing & Case Studies by 11/30/2010.
- 10-05B Hold. Chairman sign Consent Agreement. Agreement 2-day USPAP & Residential Report Writing & Case Studies. Due by 11.30.2010.
- 10-07A Hold. Chairman sign Consent Agreement 2-day USPAP & Residential Report Writing & Case Studies. Due by 12.31.2010.
- 10-07B Hold. Chairman sign Consent Agreement. 2-day USPAP & Residential Report Writing & Case Studies. Due by 12.31.2010.
- 10-08 Hold. Chairman sign Consent Agreement. 15-hour National USPAP; 30-hour General Report Writing & Case Studies; no supervisory or advisory; education due by 12/31/2010.
- 10-13 Advisory letter. Close.
- 10-15 Hold for Standard 3 Compliance Report.
- 10-16 Dismiss. Close.
- 10-17 Dismiss. Close
- 10-18 Dismiss. Close
- 10-19 Hold / Respondent has not submitted fee for State Treasurer for insufficient funds.
- 10-20 Notice of revocation of reciprocal credential.
- 10-21 Request copy true report and workfile in duplicate. Send Standard 3 Compliance Report.
- 10-22 Cease & Desist. Close.

Board Member Wilson seconded the Motion. With no further discussion the motion carried with Hartman, Moore, Wilson, Barkley, and Mitchell voting aye.

Vice Chair Moore moved to take the following enforcement action:

- 09-07 Hold. Formal / Hearing. Board adopted Order and signed by Chair.  
Respondent has 30 days respond to adopted Order.
- 09-09 Hold. Formal / Hearing. Board adopted Order and signed by Chair.  
Respondent has 30 days respond to adopted Order.
- 09-25 Hold until Case #09-07 & #09-09 are completed.

Board Member Barkley seconded the motion. The motion carried with Moore, Barkley, Hartman, and Mitchell voting aye. Board Member Wilson abstained.

Vice Chair Moore moved to take the following enforcement action:

- 10-12 Advisory letter. Close.

Board Member Wilson seconded the motion. The motion carried with Hartman, Moore, Wilson, and Mitchell voting aye. Board Member Barkley abstained.

Tentative meeting dates were approved as follows: September 16, 2010 / 2<sup>nd</sup> Floor / Revenue  
October 21, 2010 / 1Y  
November 18, 2010 / 1Y  
December 16, 2010 / 1Y

## **ADJOURNMENT**

Board Member Wilson moved to adjourn the meeting. Board Member Barkley seconded the motion. Motion carried unanimously.

At 1:50 p.m. Chairman Mitchell adjourned the August 19, 2010 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Kitty Policky, Director

These minutes were available for public inspection on August 30, 2010, in compliance with Nebraska Statute §84-1413(5).